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OFFICE OF PETITIONS

In re Application :
Gorniak et al. :
Application No. 09/971,752 :
Filed: October 4, 2001 :
Atty Docket No. 08695.0048 :
DECISION ON APPLICATION
FOR PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER RULE 705," filed August 19, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to five hundred seventy-one (571) days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is five hundred seventy-two (**572**) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 28, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. On August 19, 2004, applicants timely¹ submitted an application for patent term adjustment (with required fee). The initial determination of PTA of 572 was reduced by 763 days for applicant delay. Applicants dispute the reduction of 763 days attributed to applicants for failing to respond within three months to the Notice to File Missing Parts of Application mailed November 8, 2001.

Applicants specifically state that the patent issuing from the application is not subject to a terminal disclaimer.

A review of the application history reveals that no response to the Notice to File Missing Parts of Application mailed November 8, 2001 was considered timely filed by the Office and the application became abandoned. Applicants were advised of the abandonment by notice mailed January 21, 2004. It appears that,

¹ PALM records indicate that the Issue Fee was also received in the Office on August 19, 2004.

in response, on February 27, 2004, applicants resubmitted the response. By Notice mailed March 11, 2004, the Office withdrew the Notice of Abandonment.

In view thereof, it is concluded that applicants did not fail to engage in reasonable efforts to conclude processing or examination of the application by delaying in replying to the Notice to File Missing Parts of Application. The Notice was mailed November 8, 2001, and the evidence established that applicants filed a timely response. The response was filed within the three-month period under 37 CFR 1.704(b) and accordingly, applicants' delay should have been assessed as zero (0) days.

Moreover, within two month of the mailing of the notice of abandonment on January 21, 2004, applicants responded resubmitting the response. Applicants' response filed February 27, 2004 was constructively treated as a petition to withdraw the holding of abandonment (and granted).

It is further noted that the period of adjustment for Office delay pursuant to § 1.702(a)(1) and § 1.703(a)(1) is 572 days (not 571 days) counting the number of days in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a), December 5, 2002, and ending on the date of mailing of a notice of allowance under 35 U.S.C. 151 on June 28, 2004.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is five hundred seventy-two (572) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office of Patent Publication has been advised of this decision. Thereby, the application is being forwarded for timely issuance of the patent.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (703) 305-0309.

Karin A. Ferriter
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen